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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/665,358	09/19/2000	Igor Stojiljkovic	94-784-L	8279

20306 7590 07/29/2003

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EXAMINER

HAYES, ROBERT CLINTON

ART UNIT	PAPER NUMBER
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1647

DATE MAILED: 07/29/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/665,358

Applicant(s)
Stojiljkovic et al

Examiner
Robert C. Hayes, Ph.D.

Art Unit
1647



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Nov 7, 2002
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claims 1-6 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Specification

1. The amendments to the specification from Paper No: 9 (amdt B; filed 11/07/02) have not been entered, except for the paper copy of Sequence Listing, because of improper format. Note that new AIPA rules under 37 CFR 1.121(a) and (b) on the proper procedure for submitting amendments to the specification or the claims after March 1, 2001. In other words, new paragraphs incorporating each of the changes are required, along with an appropriate "marked up" copy.

Election/Restriction

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
- I. Claims 1-3, drawn to a nucleic acid molecule encoding the *N. meningitidis* hemoglobin receptor of SEQ ID NO:6, vectors, and associated host cells, classified in Class 435, subclass 325.
 - II. Claims 4-6, drawn to a nucleic acid molecule encoding the *N. gonorrhoeae* hemoglobin receptor of SEQ ID NO:8, vectors, and associated host cells, classified in Class 435, subclass 325.
3. The inventions are distinct, each from the other because of the following reasons:

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Although there are no provisions under the section for "Relation of Inventions" in MPEP 806.05 for inventive groups that are directed to different products, restriction is deemed proper because these products appear to constitute patently distinct inventions for the following reason:

Groups I-II are directed to products that are physically and functionally distinct, as illustrated by their distinct and unique SEQ ID NOs, and the separate and distinct bacterial species from where each is isolated. It is pointed out that there is a proper distinction between these groups, since each product is not required in order for the other to exist. Thereby, these groups are distinct and separable for the reasons stated.

Because these inventions are distinct for the reasons given above, they have acquired a separate status in the art as illustrated by their unique SEQ ID NOs, and the non-coextensiveness of the search and examination for each group would constitute an undue burden on the examiner to search and consider each of the separable groups with their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

4. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the

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currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(I).

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Robert Hayes whose telephone number is (703) 305-3132. The examiner can normally be reached on Monday through Thursday, and alternate Fridays, from 8:30 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached on (703) 305-4623. The fax phone number for this Group is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.



Robert C. Hayes, Ph.D.

July 28, 2003

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